



**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

\*\*\*\*\*

SEABROOK EMPLOYEES ASSOCIATION \*

\*

Complainant \*

\*

v. \*

\*

TOWN OF SEABROOK, N.H. \*

\*

Respondent \*

\*

\*\*\*\*\*

CASE NO. M-0575:3

DECISION NO. 86-22

APPEARANCES

Representing Seabrook Employees Association

J. Joseph McKittrick, Esquire

Representing Town of Seabrook, N.H.

Gary W. Holmes, Esquire

Also in Attendance

- Norma Adams
- Earline U. Locke
- Cora Stockbridge
- Clyde Brown
- Eric H. Small

BACKGROUND

The Seabrook Employees Association ("Association") filed improper practice charges against the Town of Seabrook ("Town") on October 5, 1985. The Association charged the Town with an unfair labor practice for not allowing a grievance to go to arbitration under the Town's personnel policy charging that this (in)action was contrary to (RSA 273-A:4) the requirement that "...workable grievance procedures" be part of every agreement.

The Town responded by denying any breach of RSA 273-A. Further, the Town agreed that the Association is the certified representative of the two bargaining units of town employees but denied the Association has been prevented from negotiating its first contract. The Town also argued that its personnel policy is not an "agreement negotiated" between the parties, but adopted by Selectmen and Town in 1985 and therefore not subject to the requirements of RSA 273-A.

A hearing was held by the PELRB at the office of the Town of Seabrook on January 28, 1986 with all parties represented.

### FINDINGS OF FACT

- (1) As of February 1985, the Association represented two units of employees in the Town of Seabrook.
- (2) On April 27, 1985 a serious leak occurred in the Town's water system, the lack of or delay in response by the Town's water department prompted the selectmen to investigate.
- (3) As a result of their investigation, the Selectmen, on May 22, 1985, sent written notices of intent to discipline three (3) water department employees.
- (4) On May 29, 1985 a hearing was held in the matter of Ernest Janvrin on the proposal to suspend Mr. Janvrin for one day without pay for his failure to take appropriate action. Mr. Janvrin was represented by the Association counsel. Hearing held under Town's personnel policy which contains a grievance procedure.
- (5) Following the May 29, 1985 hearing, Mr. Janvrin was disciplined.
- (6) On August 5, 1985 the Association attorney wrote to the Selectmen on behalf of the Association requesting the grievance be put to a neutral party for final and binding arbitration. The Town failed to respond.

### RULINGS OF LAW

The Town argues that RSA 273-A:4 states:

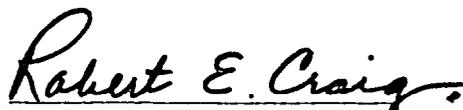
"Every agreement negotiated under the terms of this chapter shall be reduced to writing and shall contain workable grievance procedures" (emphasis added);

And that since there is no "agreement" yet worked out between the parties, then the grievance procedure in the Town's personnel policy is applicable and it does grant final and binding authority in grievances to the Board of Selectmen. We agree.

The Association's argument that the Town personnel policy constitutes a "contract" is not for PELRB to decide since it is clearly not a negotiated contract between a public employer and the exclusive representative of a certified bargaining unit. We accept the Association's argument in part, however, in that the grievance procedure in the Town's personnel policy is clearly a matter for negotiation and will be superseded by whatever is agreed to by the parties since a grievance procedure must be included in the new agreement under RSA 273-A:4.

### DECISION

Complaint dismissed.

  
ROBERT E. CRAIG, Chairman

Signed this 19th day of March, 1986.

By unanimous vote. Chairman Robert E. Craig presiding. Members Seymour Osman, James Anderson and Richard Roulx present and voting. Also present, Evelyn C. LeBrun, Executive Director.